



PUBLIC NOTICE

Federal Communications Commission
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DA 03-865

Released: March 26, 2003

**WIRELESS TELECOMMUNICATIONS BUREAU SEEKS COMMENT ON REQUEST
BY CENTRAL TEXAS COMMUNICATIONS, INC. FOR WAIVER TO ALLOW TEMPORARY
DISCONTINUANCE OF LOCAL MULTIPOINT DISTRIBUTION SERVICE**

Comment Date: April 9, 2003

Reply Comment Date: April 23, 2003

On February 14, 2003, Central Texas Communications, Inc. ("Central Texas") filed a request for a waiver of Section 101.305(b) of the Commission's Rules and Regulations ("Rule") to allow Central Texas to temporarily discontinue its U.S. domestic interstate telecommunications service being offered through its Local Multipoint Distribution Service ("LMDS") stations in the communities of San Angelo, Brownwood and Goldthwaite, Texas, Call Signs WPOH502, WPOH503, and WPOH932. Section 101.305(b) stipulates that "No station licensee subject to title II of the Communications Act of 1934, as amended, may voluntarily discontinue, reduce or impair public communication service to a community or part of a community without obtaining prior authorization from the Commission pursuant to the procedures set forth in Part 63 of this chapter. In the event that permanent discontinuance of service is authorized by the Commission, the station license is terminated...." Central Texas seeks a waiver in order to be permitted to permanently discontinue its existing service without its licenses terminating.

Central Texas states that a waiver is necessary because there is no technically reliable, economically viable equipment available in the United States that can facilitate its LMDS service, and that accordingly, it has no choice but to discontinue its service until more affordable and reliable communications equipment can be developed and manufactured. It states that it intends to again utilize the licenses to provide voice, data, and video services to customers in San Angelo, Brownwood, and Goldthwaite, Texas as soon as reliable and cost effective equipment becomes readily available. It contends that this waiver is warranted under standards set out in Section 1.925(b)(3) of the Rules, which provides that "The Commission may grant a request for waiver if it is shown that (i) the underlying purpose of the rule(s) would not be served or would be frustrated by application to the instant case, and the a grant of the requested waiver would be in the public interest; or (ii) In view of unique or unusual factual circumstances of the instant case, application of the rule(s) would be inequitable, unduly burdensome or contrary to the public interest, or the applicant has no reasonable alternative." As stated by Central Texas, Section 101.305 of the Commission's Rules, which was enacted prior to the commencement of the Commission's auctions process, was intended to address the issue of "spectrum warehousing." Central Texas contends that this is not an issue in this case, since Central Texas has demonstrated by its investment and full participation in Auction 17, and its subsequent establishment of service in the San Angelo, Brownwood and Goldthwaite, Texas area, and its intent to utilize the spectrum for which its licenses were issued.

Interested parties may file comments on Central Texas' Waiver Request on or before April 9, 2003. Parties interested in submitting reply comments must do so on or before April 23, 2003. All comments should reference Central Texas' Waiver Request, including the DA number of this Public Notice, and should be filed with the Office of the Secretary, Federal Communications Commission, 445 12th Street, S.W., Room TW-325, Washington, D.C. 20554. A copy of each filing should be sent to: (1) Qualex International, Inc., Portals II, 445 12th Street, S.W., Room CY-B402, Washington, D.C. 20554, (202) 863-2893; (2) Karen Franklin, Federal Communications Commission, Wireless Telecommunications Bureau, Public Safety and Private Wireless Division, Policy and Rules Branch, 445 12th Street, S.W., Room 4-C327, Washington, D.C. 20554; and (3) Maria Ringold, Federal Communications Commission, Consumer and Governmental Affairs Bureau, Reference Information Center, 445 12th Street, S.W., Room CY-B529, Washington, D.C. 20554.¹

The full text of the Waiver Request, comments and reply comments will be available for inspection and duplications during regular business hours in the Reference Information Center (RIC) of the Consumer and Governmental Affairs Bureau, Federal Communications Commission, 445 12th Street, S.W., Room CY-A257, Washington, D.C. 20554. Copies may also be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, S.W., Room CY-B402, Washington, D.C. 20554, (202) 863-2893, facsimile (202) 863-2898, or via-e-mail qualexint@aol.com. For further information regarding the public reference file for this Request, contact Maria Ringold, Chief, Wireless Branch, RIC, (202) 418-1355.

Unless otherwise provided, requests for waiver of the Commission's Rules are subject to treatment by the Commission as restricted proceedings for *ex parte* purposes under Section 1.1208 of the Commission's Rules, 47 C.F.R. § 1.1208. Because of the policy implications and potential impact of this proceeding on persons not parties to the waiver request, we believe it would be in the public interest to treat this case as a permit-but-disclose proceeding under the *ex parte* rules, *see* 47 C.F.R. §§ 1.1200(a), 1.1206. Therefore, subsequent to the release of this Public Notice, *ex parte* presentations that are made with respect to the issues involved in the subject Waiver Request will be allowed but must be disclosed in accordance with the requirements of Section 1.1206(b) of the Commission's Rules, 47 C.F.R. § 1.1206(b).

For further information, contact Ms. Joy Alford, of the Policy and Rules Branch of the Public Safety and Private Wireless Division of the Wireless Telecommunications Bureau at (202) 418-0694, TTY (202) 418-7233, or via e-mail to jalford@fcc.gov.

By the Chief, Public Safety and Private Wireless Division, Wireless Telecommunications Bureau.

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¹ The address for FCC locations should be used only for documents filed by United States Postal Service first-class mail, Express Mail, and Priority Mail. Hand-delivered or messenger-delivered documents for the Commission's Secretary are accepted only at 236 Massachusetts Avenue, N.E., Suite 110, Washington, D.C. 20002. Other messenger-delivered documents, including documents sent by overnight mail (other than United States Postal Service Express Mail and Priority Mail) should be addressed for delivery to 9300 East Hampton Drive, Capitol Heights, MD 20743. *See* FCC Announces a New Filing Location for Paper Documents and a New Fax Number for General Correspondence, *Public Notice*, 16 FCC Rcd 22165 (2001).